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Bcc: []
From: CN=Gregory Peck/OU=DC/O=USEPA/C=US
Sent: Tue 1/13/2009 8:00:12 PM
Subject: USA today on Fill Rule/ yesterday's Supreme Court argument
[U.S. Supreme Court today](#)
[Clean Water Act](#)
[tailings ponds](#)
[dry stack](#)
[Coeur d'Alene Mines Corp](#)
[Kensington mine](#)
[a 2002 Bush administration regulatory change](#)
[Earthjustice](#)

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Our view on the environment: Should a mining company be allowed to ruin a lake?
Clean Water Act is meant to protect places such as Alaska's Lower Slate.

About 35 miles northwest of Juneau in Alaska's Tongass National Forest, there's a 23-acre lake that's at the heart of a case lawyers are set to argue in the U.S. Supreme Court today. The legal details are complex, but the basic question is plain:

Should a gold mining company be allowed to dump millions of gallons of chemical-bearing wastewater and crushed rock into the Lower Slate Lake, killing fish and virtually all other life there, raising the 57-foot bottom by some 50 feet and flooding the nearby area, all to save money?

If the Clean Water Act is to mean anything, the answer should be a simple no.

Large-scale gold mining involves excavating huge quantities of ore-bearing rock, crushing it, and treating it with water and chemicals that allow the gold to flake off and float to the surface, where it can be skimmed off. Mines typically put the resulting wastewater into large, expensive "tailings ponds" or "dry stack" storage that isolates it from the environment.

In the mid-1990s, the Coeur d'Alene Mines Corp. planned to do just that at its Kensington mine near Juneau. Traditionally, the Clean Water Act required a zero-discharge standard for new operations such as the mine, barring them from dumping pollution into streams, rivers and lakes. But thanks to a 2002 Bush administration regulatory change that made it easier for eastern coal miners to dump debris from mountaintop mining into surrounding streams, Coeur realized it might be able to skip the tailings pond or other expensive disposal methods and dump mine wastewater into nearby Lower Slate Lake.

All Coeur needed was a permit, and the Corps of Engineers, with the approval of the Environmental Protection Agency, obliged. Alarmed environmental groups sued to block the plan, and the case has wound its way to the Supreme Court.

What's at stake here isn't just one pretty lake in a remote part of Alaska but bodies of water all over the country. Using lakes, streams or rivers as dumping grounds is exactly what the Clean Water Act was created to prevent, but the Bush administration interpreted the law in ways that undercut its original

purpose. The environmental group Earthjustice says that if the court upholds the permit in this case, owners of another big gold and copper mine in Alaska's Bristol Bay region are poised to dump tailings into the headwaters of salmon streams.

President Bush received considerable praise last week for establishing a vast marine sanctuary in the Pacific Ocean, but the Kensington mine case is also part of his administration's environmental legacy. Hopefully, the Supreme Court will affirm the original intent of the law, but the larger responsibility falls to Congress and the Obama administration, which should move quickly to remove any ambiguity.

If the Clean Water Act can't protect a subalpine lake inside a national forest, something obviously is very wrong.